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S E C R E T SECTION 01 OF 02 KUWAIT 003873

SIPDIS

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SUBJECT: CONFUSION OVER PORT FEES FOR COALITION SHIPS
DOCKING IN KUWAIT

Classified By: Deputy Chief of Mission Matthew H. Tueller, Reasons
1.4(a) and (b)

1. (S) Summary and Comment. The Kuwait Ports Authority (KPA) has intermittently charged US and coalition shipping agents various vessel and cargo-handling fees, in apparent contravention of the US-Kuwait Defense Cooperation Agreement (DCA). Despite repeated MFA assurances that these vessels were exempt from all fees, shippers nevertheless have incurred charges. Consequently, Maersk-Kuwait has declined to bring USNS Charlton into Kuwait's port of Shuaiba (aka Ash Shuaybah). KPA Director of Finance Abdullah Al-Shamali (protect) provided minutes from his October 26 meeting with representatives from MFA and MOD, at which it was decided to recommend to the Council of Ministers that US vessels (but not other coalition countries) be exempt from fees and duties. Al-Shamali declined to provide a letter saying that US vessels would be exempt until the Council of Ministers takes a decision. Al-Shamali agreed, however, to schedule a meeting of all concerned parties before the January 2005 scheduled rotation of coalition forces to minimize confusion during that operation. On November 9, MFA Americas Department Head Ambassador Khalid Al-Babtain said that he anticipated that the Council of Ministers would decide to exempt US vessels, but he would not speculate when that action might be taken.

2. (C) Comment. We are concerned about the delays that this confusion over port fees could cause, and the potential impact on operations in Iraq. That concern has been expressed to KPA and MFA. We also have pushed for the exemption of other coalition members from vessel and cargo-handling fees. We find a reference to the DCA in the port fees committee's minutes as an agreement that applies only to "the American forces present in Kuwait" unsettling, as it leaves open the possibility of excluding support for operations in Iraq. We have urged Al-Babtain to ensure that the fees exemption includes all US and coalition vessels, not just those supporting operations in Kuwait. End Summary and Comment.

(U) Port Fees Dispute Leaves USNS Charlton Stranded at Sea

3. (U) Over the past several months, the Kuwait Ports Authority (KPA) has now and then charged US and coalition military shipping agents various vessel and cargo-handling fees, in apparent contravention of the US-Kuwait Defense Cooperation Agreement (DCA). Despite repeated assurances from the Ministry of Foreign Affairs that these vessels were exempt from all fees and that KPA had been instructed to cease and desist, shippers have continued to incur fees. On November 5, post learned that the US Military Sealift Command's (MSC) shipping agent, Maersk-Kuwait, had declined to accept responsibility for bringing USNS Charlton into Kuwait's port of Shuaiba (aka Ash Shuaybah). The firm asserted its concern that KPA might charge unauthorized fees and demanded a letter from its contracting officer, stating that the USG would reimburse Maersk-Kuwait for any unauthorized fees imposed by KPA. On November 5, as a result of Maersk-Kuwait's decision, the USNS Charlton was unable to dock and unload equipment for the 42nd Infantry Division as scheduled. Instead, the Charlton was forced to circle in the Arabian Gulf while waiting for permission to enter Shuaiba port.

(S) USNS Charlton Fires on Approaching Dhow

4. (S) In addition to the disruption in resupply that this dispute has caused, its force protection implications became quickly apparent when on November 7, a dhow approached the Charlton and failed to respond to warning whistles, flares or warning shots. The dhow changed course only after the Charlton had fired M-16 and M-60 rounds into its hull and bow. To prevent further such encounters, MSC and Transportation Command (TRANSCOM) at first ordered the Charlton into the Gulf of Oman pending resolution of the port fees issue. However, on November 10 MSC headquarters instructed Maersk-Kuwait to facilitate the Charlton's arrival into Shuaiba port, guaranteeing that MSC would reimburse Maersk this time only for any improper fees that KPA might charge.

(C) Council of Ministers Must Approve Fee Exemption

15. (C) On November 8, EconCouns and EconOff met with KPA Director of Finance Abdullah Al-Shamali (protect) to seek KPA's justification for charging port fees. Shamali said that he had met on October 26 with representatives from the Ministry of Foreign Affairs (MFA) legal department and the Ministry of Defense (MOD) to discuss port fees. In confidence, Shamali provided a copy of the meeting minutes. According to the minutes, KPA complained that it was facing financial difficulties because some shipping companies, claiming that they had not been paid by the US military, were withholding payment for services rendered. The committee then debated at MFA whether the US-Kuwait DCA offered them a legal basis for exempting US and coalition vessels from all fees and taxes. The MFA representative argued that the DCA differed from other countries' status of forces agreements (SOFA) with Kuwait, and that only US -- and not other coalition countries' -- ships would be exempt under the DCA. The committee ultimately decided to recommend to the Council of Ministers that US vessels should be exempt from fees and duties but that other coalition countries should not be exempt. They also agreed that the Council of Ministers should establish a mechanism to compensate KPA for its DCA-related expenses.

16. (C) EconCouns urged Al-Shamali to exempt coalition ships as well, noting that US and coalition cargo could arrive mixed together on various countries' vessels. Al-Shamali said that this should be raised with the MFA legal department. EconCouns then asked Al-Shamali to provide a letter saying that US vessels would be exempt from all fees, explaining that vessels were waiting in the Gulf because the shippers did not want to incur more fees. Al-Shamali declined, saying that no such guarantee could be made until the Council of Ministers takes a decision. He could not provide a timeline for the decision but said that until then, shipping agents might be required to make advance payment on various but undefined cargo-related charges before they would be allowed to dock. EconCouns noted that there would be a large troop and equipment rotation in January 2005, and stressed the need to find a durable solution in advance. Al-Shamali agreed to schedule a meeting of Ports Authority, military and concerned shipping agent representatives before then, to minimize confusion and misunderstanding ahead of this period of port congestion.

(C) MFA Expects Approval but Doesn't Know When

17. (C) In subsequent conversations on November 9, MFA Americas Department Head Ambassador Khalid Al-Babtain told EconCouns that he anticipated that the Council of Ministers would decide in favor of exempting USG military cargo from fees under authority of the DCA. He would not hazard a guess on when that action might be taken, but noted the urgency in clarifying the fees issue.

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